



Via Fax and U.S. Mail

November 5, 2004

Polly Lowry  
Regional Water Quality Control Board, Central Valley Region  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

RE: Comments for draft NPDES permit, Milk Cow Dairies

Dear Ms. Lowry:

Thank you for the opportunity to comment on the administrative draft National Pollutant Discharge Elimination System (NPDES) permit for Concentrated Animal Feeding Operations (CAFOs, Milk Cow Dairies). The Community Alliance for Responsible Environmental Stewardship (CARES) comprises the major dairy processors and trade associations of California's dairy industry, including the three largest milk cooperatives in California, the state's largest dairy producer and processor trade associations, and leading cheese and dairy products companies, as well as 150 other individuals, families and companies from across the state. The CARES mission is to promote an environmentally and economically sustainable dairy industry in California.

We fully appreciate the importance of the Regional Board's duty to comply with the 2003 federal rule for Concentrated Animal Feeding Operations (CAFOs), and the need for protection of our groundwater and surface water resources. The dairy industry is committed to achieving these goals. However, we believe the current administrative draft creates an unnecessarily costly, bureaucratic – and ultimately ineffective – permit system.

Intentional or not, the administrative draft outlines a policy that is business-unfriendly. Its focus is on paperwork rather than practical, workable solutions. It creates business conditions that, rather than supporting environmentally sound dairies in California, will likely drive dairy investment out of state. This is a tragedy and a missed opportunity. The new federal CAFO standards should have leveled the playing field for all U.S. dairies, while raising the overall environmental standards for all. But the administrative draft appears bent on going far beyond what the federal rule requires. This comes at a time when other business costs for California dairies are skyrocketing, and numerous new environmental regulations for air quality are also being implemented. The only sector that will benefit from this type of policy will be engineering consultants and lawyers – and those benefits will undoubtedly be short-lived, as dairies seek other states to do business, where a mountain of paperwork and a full-time team of consultants isn't necessary to

Community Alliance for Responsible Environmental Stewardship

915 L Street, #C-418, Sacramento, CA 95814

Phone (916) 441-1318 Fax (916) 441-4132

[www.dairyalliance.com](http://www.dairyalliance.com)

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maintain the right to operate what is for most producers a small, family-owned businesses with just a few employees.

This can all be avoided. By taking a different approach, the Regional Board can accomplish water quality protection and compliance with the CAFO rule without creating unnecessary, exorbitant costs. We offer specific suggestions below, but would like to stress one overarching – and so far missed – opportunity. The California Dairy Quality Assurance Program, a partnership of environmental regulators, the dairy industry, and the University of California, already plays a huge role in educating dairy producers about environmental requirements. CDQAP has an excellent track record to date, and even provides a third-party certification program to demonstrate compliance. The program has gained popularity and credibility among both regulators and dairy producers since its inception in 1999. CARES and its members have worked hard over the past several years to strengthen this program and through it, thousands of dairy producers have been educated about their regulatory responsibilities and have received assistance in complying with those responsibilities.

Despite all this, the administrative draft completely fails to recognize CDQAP as a way of achieving environmental protection. We believe it is absolutely critical that the Regional Board incorporate in its administrative draft permit incentives for completing this program, and better utilizing CDQAP to meet some or all of the requirements of the permit, rather than delegating this responsibility to private sector engineers. Failure to properly understand the opportunity provided by CDQAP and the ongoing investment in this program, both in terms of dollars and in expertise, will deal a mortal blow to the state's leading, proactive environmental stewardship effort for dairies.

CARES will continue to analyze the draft in coming days and we plan to provide additional, more detailed comments before the December hearing. In this letter, we suggest general approaches to accomplishing the goal of environmental protection in an efficient, effective way. We've divided our suggestions into the following categories:

- Groundwater monitoring
- Flood control/surface water quality
- Nutrient management planning and record-keeping
- Other streamlining measures

#### Groundwater monitoring

The draft calls for mandatory installation of groundwater testing wells on all dairies with more than 1,300 cows (approximately 500 dairies in Region 5). In addition, regular collection of water samples and laboratory analysis is required at the dairy owner's expense. This blanket approach will result in significant costs without much prospect for a return on that investment. First, testing only confirms a problem has or has not occurred with contamination of groundwater. This information is partial at best and comes after the fact; for all its cost it is not likely to help determine the source or time of contamination if any is found, particularly with existing facilities. Even if contamination was found as a result of testing, those data would not point to a solution to the problem.



University of California experts on dairy hydrology and soil characteristics have repeatedly pointed out that groundwater monitoring is far less important than prevention of pollution through proper application of manure nutrients. Requirements for proper manure management are already contained in the permit and enforcement of those requirements would be the likely result of analysis of any testing data. Therefore, we believe the Regional Board should focus its limited resources and resources of the dairy operator, on compliance with proper nutrient management and not waste those resources on an inefficient, arbitrary monitoring plan.

We believe it is also an arbitrary policy to suggest dairies with 1,300 or more cows should be universally monitored. Any threshold for monitoring should be risk-based. Since it is well-established that the major risk factor for groundwater is not cow population but on over-application of manure to croplands, we know that a 100-cow dairy with insufficient cropland poses a greater risk than a 10,000-cow dairy with sufficient land.

We would respectfully suggest the Regional Board develop a groundwater protection and monitoring policy with the following elements:

- In the case of existing dairies, the primary focus should be compliance with and enforcement of requirements of the nutrient management plan as a permit condition.
- In the case of new or expanding dairies, the Regional Board should review each on a case-by-case basis. Before granting a permit, sufficient land for disposal and a sufficient nutrient plan should be in place. If a special condition exists, such as shallow groundwater, which may increase the potential for groundwater contamination, the Regional Board would have the ability to require groundwater monitoring.
- If, through a risk-based analysis, the Regional Board determines that an existing dairy poses a risk to groundwater (e.g. extremely shallow groundwater or failure to comply with permit requirements and/or violations), the Regional Board would have the ability to require groundwater monitoring.
- The Regional Board would take steps to offset costs in cases where monitoring is required. Costs of monitoring and/or well installation could be deducted from permit fees, for example. Sampling and analysis should be required no more frequently than once per year.

#### Flood control/surface water quality protection

The administrative draft (in Attachment C) calls for each dairy to have a waste management plan (WMP) that includes facility and design specifications for existing dairies and requires the plans be prepared by a licensed civil engineer. Certifying structures that are already built and in some cases were built many years in the past may be difficult or impossible and serves no useful purpose; rather, this simply creates paperwork. Requiring licensed civil engineers to prepare the plans creates an unnecessary cost for dairy producers, and indeed, it is unlikely there are enough available civil

engineers in the private sector to satisfy this requirement without creating delays, supply-demand imbalance and other disorder. The plan also doesn't include any flexibility that would allow dairy producers to meet requirements through non-profit resources, such as the California Dairy Quality Assurance Program.

We would respectfully suggest the Regional Board revise Attachment C and related sections of the Administrative Draft to reflect the following policies:

- Existing dairies must meet existing standards to protect against flooding due to rainfall and storm events. They should also provide a facility description and map and demonstrate they have adequate lagoon capacity. This need not be prepared by an engineer.
- Upon review of the above by Regional Board staff, the Regional Board can require the producer to submit additional information if the Board finds that the information is incomplete or shows the facility is not protective of water quality.

Nutrient management plan

An adequate nutrient management plan is necessary to ensure proper manure management and to prevent over-application of fertilizer. However, we believe that the level of detail called for in the administrative draft exceeds needs and creates unneeded costs and paperwork. While third-party, private sector experts such as Certified Crop Advisers may be able to provide a portion of the expertise needed to ensure an adequate nutrient management plan, but we believe the dairy producer should have access to other pathways to compliance, such as the California Dairy Quality Assurance Program.

We would therefore respectfully suggest the Regional Board revise Attachment D and related sections of the Administrative Draft to reflect the following policies:

- All dairies will prepare a written nutrient management plan. The plan will demonstrate or include:
  - Sufficient cropland for application (or written agreements for offsite hauling)
  - A process for recording all solid and liquid manure applications, total manure produced and its disposition, with records to be maintained on the dairy and available for inspection by Regional Board staff
  - Any off-site hauling for which the dairy producer wishes to be credited for nutrient removal off property must be recorded, in writing, with identity of hauler. Small loads hauled offsite need not be recorded; however the producer then cannot take credit for offsite hauling for these amounts without a manifest.
  - At least one annual test of representative samples of solid manure to determine nutrient content
  - A process for demonstration that liquid manure is applied at agronomic rates



- The nutrient management plan must be prepared and certified by a qualified person. This may include a Certified Crop Adviser or soil scientist, or other person approved by the Regional Board, and kept on site for inspection.
- Certification of the nutrient management plan through the California Dairy Quality Assurance Program will be equivalent to having the nutrient management plan prepared and certified by a qualified person.
- The Regional Board will not attempt to regulate off-site haulers and users of manure *through* the dairy producer. Producers should only be required to demonstrate that a specified amount of manure was delivered to a legitimate third party and only in the case when the producer wishes to take credit for hauling the nutrients off site. Any regulation of that manure upon leaving the dairy property, such as nutrient testing requirements or how the manure is used, should apply to hauler and/or subsequent user. If a hauler desires a nutrient analysis, that is a business decision for the dairy operator and does not require regulation.
- In general, nitrogen content of manure is far lower than commercial fertilizers; any potential for contamination of groundwater by this fertilizer is certainly duplicated in non-dairy farming operations that use manure or chemical fertilizers because application of nutrients, chemical or organic, is not an exact science. The Regional Board should recognize that setting widely disparate requirements for use of manure on a farm adjoining a dairy, compared to another farm's use of manure or chemical fertilizer, sets the bar higher for dairy farmers than for other farmers. Well protection standards and rules for fertilizer application should be generally comparable on dairy farms and non-dairy farms.

#### Other streamlining concepts

We believe there are several additional modifications the Regional Board should consider to make the permit easier to understand for dairy producers, and to enhance compliance while reducing unnecessary paperwork. We recommend the Board:

- Remove those portions of the administrative draft addressing odors and nuisances. These are generally beyond the purview of the Regional Board and are regulated by other agencies.
- Simplify and clarify timelines for compliance. Too many deadlines for different aspects of compliance will make it difficult to communicate with producers in a timely fashion about their responsibilities. Use tables and calendars to clarify when compliance events occur.
- Whenever possible, work through the educational and independent, third-party certification structure created under the California Dairy Quality Assurance Program. This will greatly leverage both the Regional Board's resources and the resources of individual dairy producers.

Once again, I appreciate the opportunity to comment on this important matter. I urge the Regional Board and its staff to strongly consider revising the approach and requirements of the permit to leverage the CDQAP, reduce unnecessary bureaucracy and paperwork, and to ultimately improve compliance and achieve the goal of water quality protection. I

am at your service if you have questions and look forward to the Board's December workshop on this matter.

Respectfully,



J.P. Cativiela  
Program Coordinator